

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

WOLFIRE GAMES, LLC et al.,

Plaintiffs,

v.

VALVE CORPORATION,

Defendant.

Case No. 2:23-mc-00037-JCC

**DECLARATION OF PETER  
BRESLAUER IN SUPPORT OF  
DEFENDANT VALVE  
CORPORATION'S OPPOSITION TO  
NEXON AMERICA, INC.'S MOTION  
TO QUASH SUBPOENA**

I, Peter Breslauer, declare as follows:

1. I am an attorney admitted to practice in the Commonwealth of Pennsylvania and am one of the attorneys representing Valve Corporation ("Valve") in the above-captioned matter and *In re Valve Antitrust Litigation*, Case No. 2:21-cv-00563-JCC pending in this Court.

2. On January 23, 2023, Valve served a subpoena ("Subpoena"), issued in Case No. 2:21-cv-00563-JCC, on Nexon America, Inc. ("NAI"). A true and correct copy of the Subpoena is attached hereto as Exhibit A.

3. Following service of the Subpoena, counsel for Valve met and conferred by videoconference with counsel for NAI eleven times, on February 8 and 13, March 9, 15, and 27, April 14, 18, and 20, and May 3, 16, and 18. Counsel for NAI, Jared L. Cherry, and the

undersigned as counsel for Valve, represented Nexon and Valve in these meetings. Counsel for Valve certifies pursuant to LCR 37(a)(1) that he met and conferred in good faith with counsel for NAI but they were unable to resolve the dispute.

4. Attached hereto as Exhibit B is a true and correct copy of an article entitled “Nexon MMORPG title V4 Now Supports Cross-platform Play!,” available at <https://www.gamerbraves.com/nexon-mmorpg-title-v4-now-supports-cross-platform-play/>

5. Counsel for NAI has repeatedly refused to offer facts regarding NAI’s business or the availability of responsive documents that would help in resolving the dispute. After Valve told NAI it would accept annual sales data instead of monthly data, and asked NAI to identify the non-data requests for which it might have reasonably accessible responsive information, NAI’s counsel responded, “I have explicitly stated many times that I am not representing facts to you regarding Nexon’s business and that I will not do so. **I have reiterated that I have no firsthand knowledge of Nexon’s records, retention policies, or business relationships.**” *See* Exhibit C, attached hereto (true and correct copy of email exchanged between counsel for NAI and counsel for Valve on March 16 and 17, 2023) (emphasis added). NAI’s refusal to furnish information about what responsive documents it has made negotiations unproductive.

6. Nevertheless, Valve proceeded to scale back its requests, narrowing to those in the Joint Statement. *See* Exhibit D, attached hereto (true and correct copy of email thread containing email sent by counsel for Valve to counsel for NAI on March 22, 2023).

7. Despite Valve’s narrowing, NAI refused to produce a single document from its records. Rather, NAI “offered to provide to Valve verified and audited records created by the Nexon Group and made available to Nexon’s investors,” described as including annual reports showing revenue, revenue breakdowns by region, costs or revenue by category, and key performance indicators. Dkt. # 29 at 2-3.

1           8.       NAI failed to disclose in the Joint Statement that those “verified and audited  
2 records” consist solely of publicly available documents on its parent company’s investor  
3 relations website, *see* <https://ir.nexon.co.jp/en/library/result.html> at “Quarterly Earnings”  
4 subpage. Crucially, those materials do not break out NAI’s (or Nexon Co. Ltd.’s) U.S. sales,  
5 the key data relevant to a geographic market that may be limited to the U.S. An offer to  
6 “produce” publicly available documents that lump sales together geographically is no offer of  
7 production at all.

8           9.       On May 16, 2023, counsel for NAI finally offered to produce annual numbers of  
9 NAI customer accounts created, and active users, from 2011 to date, two potentially useful  
10 proxies for “units sold,” given NAI’s business model where its games are free to play and its  
11 revenue comes from in-game purchases. *See* Exhibit E at 1, attached hereto (true and correct  
12 copy of NAI’s “Press Kit,” describing NAI’s “free-to-play” business model, linked at  
13 <https://www.nexon.com/main/en/corporate/about-nexon> and available at <https://drive.google.com/drive/folders/1sLFeEFLvc1ecL2lkUEuDw6wteO0uw-BH>); *see also* Exhibit F at 3,  
14 attached hereto (true and correct copy of the “Business Report to Shareholders” of Nexon Co.,  
15 Ltd. for the year 2011, available at <https://pdf.irpocket.com/C3659/XN1V/XVnJ/IFz2.pdf>).

17          10.       Counsel for NAI also offered on May 16 to produce NAI’s annual sales totals  
18 related to in-game purchases for 2011-2023. Counsel for Valve asked if it would be possible to  
19 break out U.S. sales. Counsel for NAI agreed to look into that, but reported on May 18 that  
20 U.S. numbers were available only beginning with 2020. In an attempt to be helpful, counsel for  
21 Valve suggested that NAI might be able to identify U.S. sales by looking at state or national  
22 sales tax or address information stored by NAI or its payment servicer. *See* Exhibit G, attached  
23 hereto (true and correct copy of email exchanged between counsel for NAI and counsel for  
24 Valve on May 18 and 19, 2023). Counsel for NAI did not take this suggestion in the spirit in  
25 which it was made. Rather, he responded, “Nexon continues to be frustrated that the list of  
26 demands for information never seems ends [*sic*].” *Id.* Valve’s suggestion was not a new

1 demand. It was simply a suggestion how NAI might identify responsive information in its own  
2 records responsive to an already pending request.<sup>1</sup>

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on May 23, 2023.

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6 *s/ Peter Breslauer*  
Peter Breslauer (*pro hac vice pending*)  
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24 <sup>1</sup> In the May 19 email of Valve's counsel contained in Exhibit G, there is a reference to Valve  
25 having offered to limit its requests to NAI's annual U.S. sales data for 2011-2023. That had  
26 been conditioned on NAI providing a declaration that it did not have any documents responsive  
to any of the requests in the subpoena other than number 1, 2, and 10. NAI rejected that  
condition.

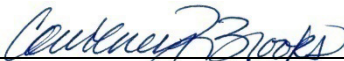
**CERTIFICATE OF SERVICE**

I certify that I am a secretary at the law firm of Fox Rothschild LLP in Seattle, Washington. I am a U.S. citizen over the age of eighteen years and not a party to the within cause. On the date shown below, I caused to be served a true and correct copy of the foregoing on counsel of record for all other parties to this action as indicated below:

<b><u>Service List</u></b>	
Brantley Ian Pepperman QUINN EMANUEL URQUHART AND SULLIVAN LLP 865 South Figueroa Street, 10 <sup>th</sup> Floor Los Angeles, CA 90017 Ph. 213-443-3000 Fax: 213-443-3100 Email: <a href="mailto:brantleypepperman@quinnemanuel.com">brantleypepperman@quinnemanuel.com</a>  <i>Attorneys for Plaintiffs</i>	<input type="checkbox"/> Via US Mail <input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via CM/ECF / Email <input type="checkbox"/> Via over-night delivery
Jared L. Cherry PCFB LLC 4001 South 700 East, Suite 500 Salt Lake City, UT 84107 Ph. 801-935-4932 Fax: 801-935-4936 Email: <a href="mailto:jared@pcfblaw.com">jared@pcfblaw.com</a>  Michael W. Ellison SMITH ELLISON APC 2151 Michelson Drive Suite 185 Irvine, CA 92612 Ph. 949-442-1500 Fax: 949-442-1515 Email: <a href="mailto:mellison@sehlaw.com">mellison@sehlaw.com</a>  <i>Attorneys for Nexon America Inc.</i>	<input type="checkbox"/> Via US Mail <input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via CM/ECF / Email <input type="checkbox"/> Via over-night delivery

1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing is true and correct.

3 EXECUTED this 23<sup>rd</sup> day of May, 2023, in Seattle, Washington.  
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Courtney R. Brooks  
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